

GREAT BASINS PETROLEUM CO.

IBLA 74-323

Decided March 1, 1976

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, denying reinstatement of oil and gas lease NM 17446-A.

Reversed and remanded.

1. Oil and Gas Leases: Production -- Oil and Gas Leases: Rentals --
Oil and Gas Leases: Termination

An oil and gas lease terminated by operation of law for failure to pay the advance rental timely will be reinstated when the lessee shows that its failure to pay the rental on or before the anniversary date was justifiable.

APPEARANCES: George H. Hunker, Jr., Esq., of Hunker, Fedric & Higginbotham, P.A., Roswell, New Mexico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Great Basins Petroleum Company has appealed from a decision of the New Mexico State Office, Bureau of Land Management, dated May 7, 1974, denying its petition for reinstatement of oil and gas lease NM 17446-A. The lease terminated automatically, as required by 30 U.S.C. § 188(b) (1970), upon appellant's failure to pay the annual rental on or before February 1, 1974, the due date. The automatic termination provision of the act reads:

* * * upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law.
[Emphasis added.]

Payment due on February 1, 1974, was postmarked in Santa Fe, New Mexico, on that date, a Friday, and was received in the New Mexico State Office on Monday, February 4, 1974.

In its petition for reinstatement, filed pursuant to the Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188(c) (1970), appellant states that the lease, embracing the NE 1/4 SE 1/4, Sec. 21, T. 23 S., R. 34 E., N.M.P.M., is committed to and constitutes a vital part of the unit area for the development and operation of the Antebellum Unit, which Unit Agreement was approved by the Geological Survey on September 13, 1973; that the lease is embraced in a well spacing unit established by the New Mexico Oil Conservation Commission for the drilling of a test well to test the Morrow formation of the Pennsylvanian Age; that appellant was conducting actual drilling operations on the Antebellum Unit No. 1 well and had obtained a producible gas well located upon said drilling unit at the time rental became due on the subject lease; and that termination for failure to pay rentals does not apply to a lease located in a unit agreement if there is a producing or producible well in the unit area on the date rental is due.

Appellant also filed an affidavit by its President, Charles W. Hatten, in which he averred as follows:

The lease in question was included in the Antebellum Unit and also within a 320-acre spacing area wherein the Great Basins American Fuels Well No. 1 is located. It was at that time, and is now the considered opinion that since the above referred to unit well, as of the 1st February was capable of being a producing well it was extremely questionable as to whether in all actuality any rental was due for the lease in question. However, after much discussion, it was decided that even though rental was probably not due because of the above mentioned circumstances, that a diligent effort be made to pay such rental. I, therefore, called the American Fuels Corporation office in Albuquerque, New Mexico, American Fuels having a small net profits interest in such well, and reviewed the situation with them. Subsequently, American Fuels acquired a certified check in the amount of \$ 20 for the payment of such lease rental and flew said check by helicopter from Albuquerque to the Bureau of Land Management office in Santa Fe. Unfortunately, the office had closed. The check was, therefore, put in an envelope, postmarked 1st February and mailed to the Bureau of Land Management. I feel that even though circumstances dictated that there was

no reason to pay such rental due to the producible nature of the above referred to well, that all due diligence was made by this company to properly pay the lease rental in question, and to keep the lease in effect either by the payment of rentals or by the establishment of production.

The decision below held that appellant had not satisfactorily complied with the requirement for reinstatement as provided by the Act of May 12, 1970, supra, and the implementing regulation 43 CFR 3108.2-1(c), because the payment was not mailed in sufficient time to be received by the due date, and because the report from the Geological Survey indicates that a well on the unitized area which embraces this lease was not capable of actual physical production until March 1, 1974.

The regulations provide that reinstatement of terminated leases is discretionary with the Secretary. 43 CFR 3108.2-1(c)(4). The statute does not define what may be considered to be "justifiable" but merely provides that the Secretary may reinstate the lease if "it is shown to the satisfaction of the Secretary of the Interior that such failure was * * * justifiable * * * on the part of the lessee." 30 U.S.C. § 188(c) (1970). In the landmark decision interpreting the reinstatement provisions of the 1970 amendment to section 31 of the Mineral Leasing Act this Board said:

* * * To be "justifiable" within the meaning of the statute, sufficiently extenuating circumstances must be present so as to effect the lessee's actions.

Louis Samuel, 8 IBLA 268, 274 (1972). While the factual circumstances of the subject case do not fall within the pattern of any of the numerous factual situations that have been considered by the Board in Samuel and subsequent cases, we are of the opinion that there are sufficiently extenuating circumstances in this case to justify granting the relief requested.

Because we find that the lease should be reinstated, it is unnecessary to resolve some of the legal arguments expressly stated or implied in appellant's statements to support this appeal and petition.

Accordingly, we hold that the lease should be reinstated if all else be regular.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case remanded for further appropriate action.

Anne Poindexter Lewis
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Joseph W. Goss
Administrative Judge

